

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Conference Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
Wednesday, April 23, 2008 at 6:00 P.M.

MEMBERS PRESENT: Larry Willis, Chairman; Richard Medcalf, Don Mottley, Terry Dayvolt, Scott Dowers and Tony Curtis.

Also present were: Sherri Rector, Executive Director and Secretary; Morrie Doll, Attorney and Jaynann Hebner, staff.

MEMBERS ABSENT: William McCune

MINUTES:

The Chairman called the meeting to order and asked if everyone has had a chance to review the minutes from the regular meeting on March 26, 2008. He asked if there were any corrections or additions.

Mr. Willis stated that Board Member, Tony Curtis was noted as being both present and absent. He stated that Mr. Curtis was absent and the recording secretary would make the correction.

Mr. Dayvolt made a motion to accept the March 26, 2008, minutes with the correction.

Mr. Mottley seconded and it was unanimously carried.

The Chairman explained the Rules of Procedure.

SPECIAL USES:

BZA-SU-08-09 – Applicant & Owner: Kimberly A. Doty
Premises – Property located on the E side of Maurer Rd. (E 250) approximately 500' S of the intersection formed by Maurer Rd. (E250) and Tennyson Rd. (N 275), Skelton Twp., 2488 Maurer Rd. (Complete legal on file)

Nature of Case – Applicant requests a Special Use, SU-24, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow a dog kennel in an "A" Agriculture Zoning District. *Advertised in the Boonville Standard on April 10, 2008.*

Kimberly and Paul Doty approached the podium and signed their name for the record.

The Chairman requested a staff report.

Mrs. Rector stated that we have all return receipts from certified mail of notice of this meeting to the adjacent property owners. She stated the applicant is requesting a Special Use "SU-24" to allow a Dog Kennel for personal use. She said the applicant states on the application, "We have 6 coon dogs and 2 rabbit dogs. The dogs are used for hunting only and we are doing no breeding or selling of dogs. All the dogs are in pens on concrete pads with dog houses that are kept clean. We are not close to anyone and there is a wooded area to the south as well as a wooden fence that provides a noise barrier." She stated the applicant has lived at this address for 5 years with the dogs and has always obtained a dog license. She said they were informed that these licenses are no longer issued and

came into our office to inquire if there was anything else they needed in place of the license and at that time they were told about a Special Use. She stated the property is approximately 5 acres zoned "A" Agriculture with all surrounding property being zoned the same. She stated again that these dogs are for personal use only and it is not a business. She said there is no flood plain and the application is in order.

The Chairman asked if the applicant had anything to add to the staff report.

Mrs. Doty stated no, everything stated in the report was correct.

Mrs. Rector stated that 4 or more weaned dogs does require a Special Use.

Mrs. Doty stated that they were here because they want to do the right thing.

Mr. Willis asked if the applicant has ever boarded dogs for anyone while living at this address.

Mrs. Doty stated no, and they do not intend to ever board dogs.

Mr. Medcalf asked if 8 dogs were all they planned on ever having.

Mrs. Doty stated yes, that was all they had pens for.

Mr. Mottley stated that he appreciated their honesty in coming into compliance with the ordinance.

The Chairman called for any remonstrators, being none he asked if Board Members had any further questions.

Mr. Medcalf asked if the property behind them were farm fields.

Mrs. Doty stated that was true and there is a small wooded area between them and a neighbor that they leave grown up on purpose to block noise. She stated that the dogs do bark at feeding time and the woods help block that noise as well as a fence that also helps. She stated that they try not to irritate the neighbors.

Mr. Doty stated they have always obtained a kennel license which did not limit the number of dogs. He said they were not looking to get any more dogs and they would probably be reducing the number of dogs due to his health. He stated that his doctor told him to keep as active as possible and the hunting dogs are a way for him to do that.

The Chairman entertained a motion.

Don Mottley made a motion to approve application BZA-SU-08-09 and the finding of fact be made as follows:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.

6. The specific site is appropriate for the USE.
7. The applicants have had the dogs for 5 years and the Use will allow them to keep their dogs for hunting and personal use.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any requirements of the Warrick County Animal Control Department.
2. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
3. Subject to a maximum of 8 dogs.

The motion was seconded by Richard Medcalf and unanimously carried.

BZA-SU-08-11 – Applicant: United Minerals, Inc. by Gregory Olinger, Pres. Owner: Midwest Coal Reserves of Indiana, LLC by Charles A. Burggraf, Vice Pres.
Premises – 435.9 acres located on the N side of Holder Hill Rd (N 800), S side of Big Creek, E side of Peabody Railroad to Yankee town Dock and the W side of SR 61, Hart Twp. (Complete legal on file)
Nature of Case – Applicant requests a Special Use, SU-15, for the district requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow mineral extraction, storage and processing in an “A” Agriculture and “CON” Recreation and Conservancy Zoning District. *Advertised in the Boonville Standard on April 10, 2008.*

Don Ashley, Attorney for Midwest Coal Reserves of Indiana approached the podium and signed his name for the record.

The Chairman requested a staff report.

Mrs. Rector stated we have all return receipts from certified mail of notice of this meeting to the adjacent property owners. She said the applicant is requesting a Special Use, SU-13 to allow mineral extraction, storage and processing. She stated the property is 435.9 acres located as follows: Parts of the SW ¼ of Section 15; Parts of the E ½ of the SE ¼ of Section 16; Parts of the E ½ of the E ½ of Section 21; Parts of the W ½ of Section 22; all in T4S and R8W in Warrick County, Indiana. She stated the property lays north of Holder Hill Rd., west of SR 61, south of Big Creek and east of the railroad tracks and the applicant states that in general the property currently has land uses consisting of cropland, forest, wildlife, water and portions have been previously mined as part of another mining operation. She stated we have a letter from the Warrick County Engineer stating if Holder Hill Rd. was to be used by overweight vehicles, the company would need to either petition the County to close a portion of the roadway (if using heavy coal machinery), or a road usage agreement that would need to be filed prior to any hauling taking place. She said we also have a letter from the Warrick County School Corp. Director of Transportation that reads as follows. “We do have buses on Holder Hill Rd., Madden Rd., and Turpin Hill Rd. I would be concerned with the times they would be using the road as well as the conditions of the road with added heavy traffic. We do have a haul road crossing at both Holder Hill Rd. and Turpin Hill Rd. and they are both problem areas, due to the angle that is crosses Turpin Hill Rd. and the lack of trucks stopping at both of these roads. There is a stop sign for the haulage road at both crossings.” She stated that Attorney Doll submitted a letter which explains in detail the number of regulations and statutes in regards to mining which she emailed to each of the Board Members. She stated there is no flood plain and the application is in order. She stated she would also like to add that they did have a commercial site review with the applicant and it was determined in that meeting that the entrance would be off of SR 61 and not any other county roads.

The Chairman asked if Mr. Ashley had anything to add to the staff report.

Mr. Ashley stated the property has been owned by Peabody Coal Co. who is the predecessor to Midwest Coal Reserve for more than 50 years; it was part of their long range plan which incidentally expressly excluded mineral extraction from the purview of that ordinance. He stated it is bounded by natural boundaries as indicated by Mrs. Rector. He said there will be no County roads used by heavy equipment and there is a road permit pending from the state highway department and all vehicular traffic, with regard to the operation of the mine, will use SR 61.

Mr. Willis asked how many employees he thought the mine will employ.

Rich Montgomery with United Minerals approached the podium and stated that they anticipated approximately 50 employees at maximum during the construction. He stated that this was a short term project that will probably be less than 2 years in terms of mining.

Mr. Dayvolt asked if he could show them on the map where the entrance on SR 61 was proposed.

Mr. Montgomery pointed out on the map to the Board Members where the entrance was proposed.

There was extensive conversation in regards to the entrance location on the map.

Mr. Montgomery stated that there is a driveway permit pending with INDOT at the Vincennes District. He said there is actually a commercial application that will come after the logging.

Mr. Mottley stated he has been dealing a lot with the permits and has challenged a few in regards to the statute 312(C)25-4-23, #3: Identification numbers of applications for those permits or license or if issued the identification of the permits are licensed. He stated that what he runs into is DNR issues the permit pending and the mining company doesn't follow through, for example; a permit was issued in 2003 and as of yesterday the mining company hasn't applied for any of their permits, explosive storage or anything. He asked if they would be willing to send copies of the permits to the Board. He said normally the Board states they have to have approval from all federal, state and local permits but he doesn't know if that is enough because some of the permits are 5 years old and still have not applied for any application.

Mr. Montgomery said he could not speak for what he was referencing but he can assure them that MPPDS permits, explosive storage permits are applied for and maintained. He said as far as them being available, he doesn't know what the requirements are as far as those organizations. He stated that he would not have a problem with providing them to the Board, but he is not sure they would want the volume of paper it requires and a lot of it is available at the library.

Mr. Mottley stated that he remembers what he went through with Yankeeetown #2 Mine with explosives and things. He said they operated for 2 years without Fire Marshall's Permit and this is the kind of thing he is concerned about.

Mr. Montgomery stated they have an ATF license, they have a State Fire Marshall Permit, Mine Health and Safety also inspect the explosive side of it, plus DNR inspects it as well. He stated to trust him; they are being looked at on several fronts. He stated that he thinks there are 27 different agencies that they deal with during the process of obtaining and operating a mine.

Attorney Doll asked Mr. Montgomery when they thought they would commence the mining activity. He said the reason he asks is because there is a time limitation in the Warrick County statutes that states, if they approve it tonight it will have to start within 6 months. He stated he understands that all this takes time but he is worried that they will have a technical violation where it expires and becomes null and void because the 6 months has expired.

Mr. Montgomery stated that they did not anticipate that being a problem but if the Board could clarify what constitutes activity. He said they would start with construction of an entrance, building roads, pumping some water, clearing trees and doing some activities that they would have to do before they actually extract coal.

Atty. Doll asked when he thought the first mineral extraction, storage, processing or production will occur because that is what they are asking for from this Board.

Mr. Montgomery stated he thought probably July of 2008.

Atty. Doll stated that would be within the six months. He asked if they would have a problem if the Board would condition any approval it might give specifically to United Minerals. He said if you would transfer this to XYZ Mining Co. in a year, they would have to come in and ask for some consideration from the Board.

Mr. Montgomery stated he did not see that being a problem.

Atty. Doll stated that he realized this was not there intention but life is full of unintended consequences.

Mr. Medcalf asked if they would be blasting near the road.

Mr. Montgomery stated yes, it would be near but not right next to the road and there will be buffers and obviously they can't operate that close.

Mr. Medcalf asked how they took in to consideration the utilities running up and down the roads.

Mr. Montgomery stated that utilities are always located if activity is close. He said each utility has a limit from the blasting stand point.

Mr. Medcalf asked if there is a water line and they were to blast, how can they be sure that it won't affect the lines. He said he was speaking in regards to a major utility line for water or natural gas.

Mr. Montgomery stated that those structures, such as power poles or buried lines, each have a limit assigned to it based on State law and those limits determine how they blast or what quantity of explosives to use.

Mr. Medcalf asked if DNR set how close they could blast to a natural gas line.

Mr. Montgomery said yes. He said a gas line will have a right of way which they will never be allowed to get in unless they had approval from the owner of the structure. He stated how close is determined by the ability to shoot the rock that is there and comply with the limits.

Mr. Dayvold asked if he was talking about percussion limits.

Mr. Montgomery stated it was both ground vibration and air percussion. He said air percussion would not be a factor on an underground line so that would only apply to a home or structure.

Atty. Doll asked Mr. Montgomery if they monitored all their blasts or a sample of their blasts.

Mr. Montgomery stated yes, at least a sample and anytime they are within a 1000 ft. of a structure then they are required to monitor.

Atty. Doll stated that all that information is public record and provided to DNR.

Atty. Montgomery stated they are available for public review and state review.

Mr. Doll asked if they are within 1000 ft. of a buried natural gas line and are doing blasting, will they have to at that point in time, seismically monitor those blasts.

Mr. Montgomery replied either that, or use another form of compliance which would be scale distance equation. He stated that it is a formula that determines, based on a distance, what quantity of explosive they can use.

Mr. Medcalf asked if prior to this process they actually communicated with the utility companies to understand what requirements they may have.

Mr. Montgomery stated that they are notified prior to this whole process and given the opportunity to comment as part of the mining permit through DNR. He stated that this is not new, they have been blasting around utilities for a long time and there have been many studies in which these limits are based on.

Mr. Mottley asked if it was correct that the permit stated they could mine within 100 ft. of SR 61.

Mr. Montgomery said it says if they mine within 100 ft. they would have to seek approval.

The Chairman called for any remonstrators to step forward.

Bill Musgrave approached the podium and signed his name for the record. He stated he was a resident of Chandler, Indiana. He stated that he saw the mining permit in the paper. He said anytime there was mining there would be additional truck traffic on the roads and it seems with Vectren mine out there they are tracking dirt and debris all the way into town causing dust problems. He stated that the school buses are a concern and anytime the coal companies come in and close roads they don't always open the same amount or leave them in the same condition. He stated that there seems to be a practice of when the mining companies get close to roads or areas that they can't mine, they go in and auger. He stated that some of the roads in the Ayrshire Mine area were "wavy" and he was told that part of that area was also augered, so that leaves an avenue of settlement in the road in between places they augered, because they have to leave a certain amount in between as a buffer. He also stated that the coal companies do not pay the same amount of taxes as a regular property owner so this takes money directly out of the County and of course the ground can't be developed into housing which would bring in even more money for the County. He stated he believes that this property was the Lynnville Mine area which of course during the time period when the Lynnville Mine was in operation a lot of those people were Warrick County residents which meant a portion of their pay came back to Warrick County. He said that it seems now a lot of the coal companies hire people out of County. He stated there is a certain amount of time that they have to shut down roads during blasting and if SR 61 was shut down, no emergency traffic would be able to get through during that time period. He said he is not sure what the time period is but it might be something to be concerned about. Mr. Musgrave submitted a site profile he printed from the internet to the Board Members. He stated the maps were from the Audubon Society and pointed out the area on the map, that is the same area they are proposing to mine, which is an important bird area located in Warrick County and is one of the largest grass lands in Indiana, covering 7000 acres. He said there is 6000 acres of habitat that is relatively undisturbed. He stated the area they are permitting for this mine is the same area. He stated he would pass the information from the Audubon Society to DNR.

The Chairman asked if there was anyone else for or against this petition.

Gerald Morris approached the podium and signed his name for the record. He stated he was concerned about his water supply because their water was supplied from underground wells and he was afraid the blasting would damage the wells. He asked who would be responsible if there was damage to one of the wells and they were not able to get water.

Mr. Medcalf asked where Mr. Morris lived.

Mr. Morris stated he lived on Dickeyville Rd.

The Chairman called for any other remonstrators.

Elmer Harvey approached the podium and signed his name for the record. He stated he has lived at the same residence most of his life and saw his first buck deer across from the old Sunlight Mines when he was a little boy. He said since then it has been stripped and he is very concerned about his water supply. He said he is also concerned about access on SR 61 during treacherous weather conditions, because of the grade there have been times when people just didn't make it. He stated that the dwellings really go downhill quickly from blasting, he has seen it cause more damage than what the earthquake caused recently. He stated he also wanted to ask where the coal would be stored because he has breathed coal dust from them for years and he knows that storage and the way it is hauled makes a big difference. He stated that he also finds the logging disturbing; he has watched it grow since he was small and this is where he grew up. He stated that he thinks they could turn the Big Creek valley area into a flood plain quickly. He said the last big rain caused Big Creek to overflow into the fields.

Shannon Bellessa approached the podium and signed her name for the record. She stated that she was speaking on behalf of her mother who lives at 9655 SR 61 N. She said her mother would like to voice a concern as a resident for the lack of notification to all residents in the area. She said that it was from notification from neighbors that this was occurring that she was given the information to contact DNR to request a pre-blast survey. She stated she lived just north of Big Creek and it was within one mile. She stated that her mother has lived there for 40 years and has experienced some of the same things as Mr. Harvey and Mr. Morris.

Mr. Medcalf asked if they had Lynnville water.

Ms. Bellessa stated that her mother had a cistern.

The Chairman called for any other remonstrators, being none he asked if Mr. Ashley would like to respond to some of the concerns.

Mr. Ashley stated that he failed to indicate that there have been previous mining operations on this particular property. He stated that United Mineral's certainly did not want to cause any harm to any property in the area. He said they do pre-blast surveys on request.

Mr. Montgomery stated yes, anyone who is within one mile of the operation. He stated they have not done any surveys yet because they will wait until closer to time to start blasting.

Mr. Medcalf asked what a pre-blast survey entailed.

Mr. Montgomery stated they pay a consultant per the property owner's request to go on the property and document the condition of the house and any other structures by taking photographs and videos. He said this provides a benchmark or baseline to be able to go back at a later time and determine what has occurred or changed.

Mr. Dayvold asked who the consultant was.

Mr. Montgomery stated there are different ones, but they use a company in Evansville called Vibronics.

Mr. Medcalf asked if the pre-survey shows the well working correctly and if there ended up being damage, what they would do to correct the problem.

Mr. Montgomery stated that there is not a lot that can be done as far as photographing a well or cistern because it is all underground, although they do sample wells when they are within 1000' of the well and they do baseline monitoring to show what the quality and quantity of water was to begin with. He said that in the event there is a problem, the DNR permit would require them to provide an alternate source of water whether it be drilling another well or running city water or some other option that would be worked out to correct the situation.

Mr. Medcalf stated he was a little concerned because he knows the area they are in and he would not want to wake up tomorrow without water either. He asked what kind of guarantee they have for these people to insure they will be taken care of in the event of a problem so they know they won't have to hire an attorney to get a resolution. He said he wants to make sure the property owners are protected.

Mr. Montgomery stated that this is all part of the permitting process and the application. He said they would call DNR and say their well is losing water then a hydrologist would come out and look at it in relation to the mining operation. He stated that this traditionally has not been a problem for them, although he can't say it has never been a problem because it has, and it was taken care of. He stated guarantees are few and far between in life and he can't necessarily 100% say someone seven miles out that loses their water will be determined to be their fault. He said there are people that take advantage of a situation like this and we have to have some way to protect themselves. He stated he cannot say that anyone within ten miles that has a problem will get a new well. He said it has to be a case by case basis.

Mr. Dayvolt asked where the temple will be located.

Mr. Montgomery stated they will not be processing coal in the normal stand point of what you are used to seeing. He said there will not be a wash plant and they will not even crush coal, they will have a yard which will be on the southern end of the mining operation. He stated there is old works on both the north and south ends which obviously removed the coal previously and there is nothing left there so their extraction will take place between the two different mining pits. He stated they will mine from the south one to the north one.

Mr. Montgomery pointed out on the maps to Board Members exactly where he was talking about.

Mr. Doll stated that the large water feature on the southern part of what is labeled the Sunlight Coal Co. will be the initial cut and the yard will be at the Dickeyville location close to the proposed access area on SR 61.

Mr. Montgomery stated they will basically haul north; the trucks will come from the north and haul back to the north. He said they will not be going through the town of Boonville according to current contracts.

Mr. Mottley asked where the coal will be washed and processed.

Mr. Montgomery stated it will be going to another mine facility of their's in the Buckskin area.

Mr. Dayvolt asked if there will be a wheel wash area.

Mr. Montgomery stated there is not one proposed at this time.

Mr. Doll asked if that had come up in the State DOT application yet.

Mr. Montgomery stated no, but it has not been finalized. He stated they are bringing in workers that already work for them who live in several local Counties such as Warrick County, Spencer, Vanderburgh, Dubois, Pike and Gibson. He stated the concern regarding SR 61 being shut down for blasting; only in an extreme case would the highway be closed. He stated they do not anticipate having to do this and traditionally they are able to mine at a distance they think is safe. He said he cannot completely rule it out, but they would have flagmen out there and it would be for a very short time.

There was extensive conversation regarding where the blasting locations will be on the map.

Mr. Mottley asked how deep the lakes are that they are dewatering.

Mr. Montgomery stated approximately 20' - 25'.

Mr. Willis asked how tall the coal storage piles will be.

Mr. Montgomery stated about 25', no higher than what a front end loader could reach.

Atty. Doll asked if they had any idea what their truck traffic per day will be.

Mr. Montgomery stated he thought it would be around 100 trucks per day.

Atty. Doll asked if there was any rail shipping planned.

Mr. Montgomery said they have a rail load at the wash plant that this coal will be shipped to but it would be tough to have the capacity to run from one mine to the other for such a small operation.

Atty. Doll asked if they still thought it would be a two year operation.

Mr. Montgomery replied yes.

Mr. Willis asked if they would be doing any augering.

Mr. Montgomery stated they do not see it as viable although they have placed that option in their DNR Permit, but prior to having to do that they would have to do rock mechanics to determine how that would be done so their permit will be conditioned to say "It can't happen until you come to us first and resolve these specifics.", but he can say they will not be augering under any roads or houses.

Mr. Doll asked what their hours of operation will be.

Mr. Montgomery said they run two shifts, a day shift and a second shift. He said they are 10 hours shifts, 5 days a week, half a day on Saturday and they do not work on Sunday.

Mr. Doll stated that DNR has restrictions on days of the week and times of the day you are allowed to blast.

Mr. Montgomery stated that was correct, it has to be during sunlight.

Mr. Mottley asked if they were required to advertise the blasting schedule.

Mr. Montgomery replied yes.

Mr. Medcalf asked what their requirements were for notifying property owners.

Mr. Montgomery stated they have to notify everyone within a half a mile, and it is published in the paper for anyone outside the half a mile. He said anyone within a mile can request a survey but they are not required to notice them. He stated that they send by certified mail a blast mining notice that includes where the area is, what roads are near, who the land owners are, property description and it tells them how to get a pre-blast survey.

Atty. Doll stated that the purple line of the map indicates the half mile mark.

The Chairman asked for any other questions from Board Members, being none he entertained a motion.

Terry Dayvolt made a motion to approve application BZA-SU-08-11 and the findings of fact be made as follows:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.
7. The USE will be beneficial to the community.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Applicant must be in compliance with all present State and Federal applicable statutes and administrative regulations. Should such statutes or regulations be repealed or weakened in their stringency during the operation of the mining activities, the applicant shall remain bound by the provisions as they exist as of this date.
2. Subject to meeting all local regulations and permitting.
3. Subject to approval for this applicant only.

The motion was seconded by Tony Curtis, Don Mottley abstained and all other members present voted for the motion.

BZA-SU-08-12 – Applicant: Alvey's Sign Co., Inc. by John Reiplinger, Admin. of H.R. Owner: Blessing Properties, LLC c/o Summit Real Estate by Scott Hiatt, Agent
Premises – Property located on the N side of Ruffian Ln. approximately 0' W of the intersection formed by Ruffian Ln. and Triple Crown Dr., Lt 78B in the Replat of Triple Crown Estates Corrected Replat, Ohio Twp., 8788 *Ruffian Ln.*

Nature of Case – Applicant requests a Special Use, SU-8, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow a message board on an existing sign in a "C-1" Neighborhood Commercial Zoning District. *Advertised in the Boonville Standard on April 10, 2008.*

John Replinger approached the podium and signed his name for the record. He stated his name and that he was with Alvey's Sign Co.

Mrs. Rector stated that she has a recorded POA for Mr. Riplinger to represent the owner, Blessing Properties, LLC.

The Chairman asked the Director for a staff report.

Mrs. Rector stated she has all return receipts from certified mailing of notice of this meeting except from Marcus & Janice Miller; however they do have the white pay receipt and a copy of the property card. She stated the applicant is requesting a Special Use, SU-8, to allow the addition of a message board on an existing sign located in a legal drain easement and the applicant did receive approval from the Drainage Board on March 26, 2008. She stated the property is Lot 78B in the Replat of 78A and 78B in the Replat of Lots 77 and 78 in Triple Crown Estates approximately .90 acres more or less zoned "C-1" Neighborhood Commercial. She stated properties to the east and west are zoned "C-1" Neighborhood Commercial with businesses, property to the north is zoned "C-4" General Commercial being Bellmore Landing Subdivision and property to the south is zoned "R-3" Resort District with residences. She said the applicant states on the application that the double faced electronic sign will replace an existing sign face in the top portion of the pole pylon sign for Triple Crown Center and the electronic sign is to be used by Dr. Ginny Steiner who is a tenant in Triple Crown Center. She stated the original Improvement Location Permit issued in 2001 for the existing sign in the legal drain easement was signed off by the County Surveyor certifying that the sign location was okay. She stated there is no flood plain and the application is in order.

The Chairman asked if the applicant had anything to add to the staff report.

Mr. Riplinger stated they were attempting to come into the 21st century by replacing the font style reader boards that have been around forever. He stated they are not changing the footprint of the sign at all; they are just removing the top or sign head and the overall height will actually be lowered by about 1' 10".

Mrs. Rector stated that normally when there is just a change out of the face there is no permit required but in this case they are required to file for the Special Use because of the message board. She stated that the sign cannot say stop, danger, look or anything that would confuse traffic and cannot have any rotating or revolving beams of light.

Mr. Willis asked if they were only replacing the part of the sign where The Pool Center's sign was.

Mr. Riplinger stated that the part that says Triple Crown Center is also coming down.

Mr. Medcalf asked if there had been any studies in regards to these signs being a safety hazard to motorists.

Mrs. Rector stated not that she was aware of.

The Chairman asked if there were any remonstrators here for or against this petition, being none he entertained a motion.

Mr. Medcalf made a motion to approve application BZA-SU-08-12 and the finding of fact be made as follows:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.

3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.
7. The USE will allow the improvement of an electronic message board to an existing sign.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
4. Subject to any required Building Permit for the Warrick County Building Department.
5. Subject to all public utility easements and facilities in place.
6. Subject to the message board being used for the advertisement of Dr. Ginny Steiner only and will not be used as a billboard for lease.
7. Subject to no use of words, "stop", "danger", "look", or any other word which would confuse traffic.
8. Subject to no rotating or revolving beams of light.
9. Subject to approval from the Warrick County Drainage Board.

Mrs. Rector stated that she has a question regarding condition number 6. She stated that Dr. Steiner is a tenant of this property and questions who actually owns the sign.

Marilyn Ramsey approached the podium and stated she was the sales representative on this account for Alvey's Sign Company. She stated that the message board was actually owned by Dr. Steiner and will be placed on the sign, however she has a five year lease and at the end of that lease she has the option to remove it and at that point the existing sign as you see it now would be restored. She stated that is the desire of Dr. Steiner to take the message board with her and that has been approved by the owner of the property.

Atty. Doll stated that the technology is such that five years from now it will not have a lot of value. He stated that to remove it and locate it somewhere else would be costly so it is likely that she does not take her sign, therefore he feels it should be conditioned for the use of a tenant in the building.

Mrs. Rector stated that the petition list the applicant as Alvey's Sign Company and the owner is Blessing Properties, LLC so Dr. Steiner is not even mentioned. She also said if there were a violation of the sign it would be the property owners responsibility and that is who the Board would go after.

Mrs. Rector amended condition number 6 to read as follows:

6. Subject to the message board being used for the advertisement for tenants of Blessing Properties and will not be used as a bill board for lease.

There was a second by Scott Dowers and the motion carried unanimously.

VARIANCES:

BZA-V-08-06 – Applicant: Habitat for Humanity for Warrick County by Dennis Juncker, Construction Supervisor. Owner: Lake Group Inc. by Jerry Aigner, Secretary.

Premises – Property located on the S side of Drake Dr. approximately 95' W of the intersection formed by Drake Dr. and Mallard Cir., Ohio Twp., Lot 84 in Mallard Lake Phase I Subdivision. 7909 Drake Dr.

Nature of Case – Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a Single Family Dwelling not meeting the minimum front yard requirements, side yard requirements, and rear yard requirements in an "R-2" Multiple Family Zoning District. *Advertised in the Boonville Standard on March 13, 2008.* Continued from the March 26, 2008 meeting.

Mrs. Rector stated that we received a letter that states, "Area Plan Board, I was unable to get the necessary information for the Variance we applied for last month. We would like to ask for a continuance until the May, 2008 meeting. I will have all the information at the next meeting. Thank You, Dennis Juncker, Construction Supervisor, Habitat for Humanity."

Don Mottley made a motion to continue application BZA-V-08-06 until the May 28, 2008 meeting.

Richard Medcalf seconded and the motion carried unanimously.

BZA-V-08-07 – Applicant & Owner: Gary & Brenda Nook

Premises – Property located on the W side of Two Story Rd. (E 100) approximately .75 miles S of the intersection formed by Two Story Rd. (E 100) and Degonia Rd. (N 100), Boon Twp., 233 N Two Story Rd. (Complete legal on file)

Nature of Case – Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow an Improvement Location Permit to be issued for a single family dwelling to be constructed on property with an existing single family dwelling to be removed in an "A" Agriculture Zoning District. *Advertised in the Boonville Standard on April 10, 2008.*

Gary and Brenda Nook approached the podium and signed their names for the record.

The Chairman asked for the staff report.

Mrs. Rector stated all return receipts from certified mailing to adjacent property owners of notice of this meeting have been submitted. She stated the applicants are requesting a Variance to allow the construction of a single family dwelling on property with an existing residence that will be removed upon completion of the new residence. She said the applicant states that the bedroom and stove will be removed once they are in the new house. She stated the property is approximately 2 acres zoned "A" Agriculture with all the surrounding property being zoned the same and used for farming. She said the applicant states on the application "It would be a financial hardship to move into another house in order to demolish the existing house and then build a new house on the same property. Once the new home is issued an occupancy certificate, the existing house will be demolished within 4 months." She stated if approved there should be a time limit established on how long they have to remove the existing residence, there is no flood plain on the property and the application is in order.

The Chairman asked if the applicants had anything to add to the staff report.

Mr. Nook said no.

Atty. Doll asked exactly where the property lines were on the photograph because it looks like there is an encroachment.

Mrs. Rector stated that you cannot use the aerial photograph to locate property lines. She said the lines are hand drawn in and are not accurate. She stated that the plot plan submitted with the application is drawn to a scale and that is what the Board should go by.

The Chairman asked if there were any questions from Board Members.

Mr. Mottley asked if it was possible for them to have the existing house torn down within 4 months of taking occupancy of the new house.

Mr. Nook stated that he didn't think there would be a problem with that time frame.

Mr. Willis asked if it would be a modular home or a stick built home.

Mr. Nook stated it would be a stick built home.

Mr. Medcalf asked if the pole barn was staying.

Mr. Nook said yes, there is a little barn being removed also but this pole barn stays.

Mr. Doll asked if the pole barn was permitted.

Mr. Nook stated yes, they had the pole barn built themselves.

Mr. Medcalf stated that the pole barn is behind the existing house but once the new house is built it will sit in front of the house and will this be a violation of the ordinance.

Mrs. Rector stated no, if it is zoned agriculture and is over 2 ½ acres it can be in the front yard as long as it meets the 25' front and rear yard requirement.

The Chairman asked if there were any remonstrators here for or against this petition, being none he entertained a motion.

Don Mottley made a motion to approve application BZA-V-08-07 and the findings of fact be made as follows:

1. The Variance will not result in substantial detriment to adjacent property or the surrounding neighborhood, and will not be materially detrimental to the public welfare.
2. The Variance is a means of relief because of the size of the properties and the location of existing structures for the owner to have rights to some reasonable use of the property.
3. That the circumstances of lot size and existing structures cause a hardship peculiar to the property and clearly constitutes a marked exception to the property in the neighborhood.
4. By granting the Variance, the applicant will be able to use the property for a new residence replacing their old residence that is nearing destruction.

5. The applicant would experience financial hardship having to relocated and remove the existing residence before the new residence is complete.

And the application be approved in accordance with the application and plans on file subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building permit from the Warrick County Building Department being obtained.
4. Subject to all public utility easements and facilities in place.
5. Subject to all rules and regulations of the local Health Department.
6. Subject to the existing residence being removed within 120 days of the certificate of occupancy being issued.

Terry Dayvolt seconded and the motion carried unanimously.

BZA-V-08-10 – Applicant & Owner: Douglas & Carla Hazel

Premises – Property located on the W side of Foxmoor Dr. approximately 0' N of the intersection formed by Foxmoor Dr. and Lincoln Ave., Ohio Twp., Lt. 44 in Fieldstone Sec. A Subdivision, 4499 Foxmoor Dr.

Nature of Case – Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow an Improvement Location Permit to be issued for the replacement of a fence exceeding maximum height in a building line in an "R-1" Single Family Zoning District. *Advertised in the Booneville Standard on April 10, 2008.*

Doug Hazel approached the podium and signed his name for the record.

The Chairman asked for the staff report.

Mrs. Rector stated she has all return receipts from certified mail of notice of this meeting to the adjacent property owners except for one from Derrick & Pamela Dowell; however, they do have the white pay receipt and the property card from the Auditor's Office. She stated the applicant is requesting a Variance to allow replacement of an existing fence exceeding maximum height in a building line. She said the applicant states on the application "I would like to replace the existing 11 year old wooden fence with a 6 ft. vinyl privacy fence. There is an inground pool in the back yard and for liability issues as well as privacy we need to be able to have a height of 6 ft." She stated the plot plan shows the lot being on the corner of Lincoln Ave. and Foxmoor Dr. with there being no access off of Lincoln Ave. which is the side the fence would be encroaching in the building line and the maximum height allowed in a building line is 4'. She stated the County Engineer has done an inspection and signed off on the plot plan that the fence will not cause any sight problems. She said the property is Lot 44 in Fieldstone Sec. A Subdivision being approximately .32 acres zoned "R-1" Single Family Dwelling with property to the east, north and west being zoned the same with residences and property to the south is zoned "A" Agriculture with residences. She stated there is no flood plain and the application is in order.

The Chairman asked if the applicant had anything to add to the staff report.

Mr. Hazel stated that they put the fence up 11 years ago before permits were required and they did not realize there was a building line.

Mr. Willis asked the applicant if he had contacted Willis Fence Company for an estimate because if he had there would be a conflict of interest.

Mr. Hazel said no.

Mr. Dayvold asked what the height of the existing fence was.

Mr. Hazel said it was 6' and he was not changing the location at all, it will go back exactly the same as the existing fence.

The Chairman entertained a motion.

Tony Curtis made a motion to approve application BZA-V-08-10 and the findings of fact be made as follows:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use or value of the area adjacent to the property included in the variance will not be adversely affected.
3. The need for the Variance arises from some condition peculiar to the property and does not exist in similar property in the same zone.
4. The strict application of the terms of the ordinance will constitute unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The grant of the Variance will allow the owner to replace and improve an existing fence.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to an Improvement Location Permit being obtained.
2. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
3. Subject to all public utility easements and facilities in place.

Don Mottley seconded, Larry Willis abstained and all other Members present voted for the petition.

OTHER BUSINESS:

Mrs. Rector stated that she had emailed all the Board Members in regards to the inspection for Charles Smith verifying the dogs were gone for the Special Use for a dog kennel that was denied last month. She stated when the inspector went to the property there was no one home so he was unable to tell if the dogs were gone because he does have a large enclosed building. She stated that her recommendation would be for Attorney Doll to write a letter to Mr. Smith giving him a certain amount of time to call the office and set up a time for the inspector to meet him.

Mr. Mottley stated that the problem with that is it gives Mr. Smith time to temporarily remove the dogs for the inspection.

Atty. Doll stated that when the new inspector starts in May they should have him do a follow up inspection and see what his results are and if they are somehow different than the first one the maybe they have grounds to make more inquiries. He stated they could also contact a neighbor or two and see if they have noticed any changes.

Mrs. Rector stated that she would contact the person who filed the complaint and see if the dogs were still there and if they are she will have the inspector do another visit and report back to this Board next month.

ATTORNEY BUSINESS: None

EXECUTIVE DIRECTOR BUSINESS: None

Being no other business the meeting adjourned at 8:00pm.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Area of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held April 23, 2008.

Sherri Rector, Executive Director & Secretary